

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 492

An Act to amend and reenact § 3.2-6500 of the Code of Virginia, relating to the definition of private animal shelter.

[S 1381]

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-6500 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-6500. Definitions.

As used in this chapter unless the context requires a different meaning:

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of five consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors: (i) permit the animals' feet to pass through the openings; (ii) sag under the animals' weight; or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

"Adequate space" means sufficient space to allow each animal to: (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal; and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.2-6522, animal means any species susceptible to rabies. For the purposes of § 3.2-6570, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § 3.2-6555.

"Boarding establishment" means a place or establishment other than a public or private animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barter companion animals. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier or (ii) any person whose primary purpose is to find permanent adoptive homes for companion animals.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Dump" means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent that causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the U.S. Department of Agriculture.

"Facility" means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

"Farming activity" means, consistent with standard animal husbandry practices, the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding, exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals pursuant to such purposes.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Foster home" means a private residential dwelling and its surrounding grounds, or any facility other than a public or private animal shelter, at which site through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization care or rehabilitation is provided for companion animals.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Home-based rescue" means an animal welfare organization that takes custody of companion animals for the purpose of facilitating adoption and houses such companion animals in a foster home or a system of foster homes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.2-6558.

"Humane society" means any incorporated, nonprofit organization that is organized for the purposes

of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

"Incorporated" means organized and maintained as a legal entity in the Commonwealth.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; caprae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 3.2-6574, and who adopts or receives a dog or cat from a releasing agency.

"Ordinance" means any law, rule, regulation, or ordinance adopted by the governing body of any locality.

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any locality, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

"Pet shop" means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Private animal shelter" means a facility *operated for the purpose of finding permanent adoptive homes for animals* that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other *similar* organization *operating for the purpose of finding permanent adoptive homes for animals*.

"Properly cleaned" means that carcasses, debris, food waste, and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" when referring to a facility means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the facility; and to promote the well-being of the animals.

"Properly lighted" when referring to a private residential dwelling and its surrounding grounds means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to promote the well-being of the animals.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals or a facility operated for the same purpose under a contract with any locality.

"Releasing agency" means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other

substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species and has ingested such food, without nursing, for a period of at least five days.

COMMONWEALTH OF VIRGINIA

SENATOR FRANK W. WAGNER, CHAIR

KAREN W. PERRINE, COMMISSION STAFF



General Assembly Building
201 N. Ninth Street
Richmond, Virginia 23219
(804) 786-3591 x261
(FAX) 804-692-0625
kperrine@dls.virginia.gov
<http://dls.virginia.gov/commissions/car.htm>

JOINT COMMISSION ON ADMINISTRATIVE RULES

June 24, 2015

Sandra J. Adams, Commissioner
Virginia Department of Agriculture and Consumer Services
102 Governor Street
Richmond, VA 23219

By email: sandy.adams@vdacs.virginia.gov

Re: Private animal shelters

Dear Commissioner Adams:

Pursuant to § 30-73.3 of the Code of Virginia, the Joint Commission on Administrative Rules is charged with the responsibility to review rules, regulations, and practices and make recommendations to the Governor and General Assembly. It has come to my attention that the Virginia Department of Agriculture and Consumer Services has begun a process to issue a guidance document regarding private animal shelters in response to Chapter 492 (SB 1381) of the 2015 Acts of Assembly. The Commission is concerned that the Department is utilizing an informal process to develop public policy with little formal opportunities for public input. The substantive nature of the requirements being imposed in the draft guidance document appears to be the kind normally imposed by the regulatory process.

The Commission recognizes the importance of animal shelters, private or public, in promoting the overall well-being of animals. On behalf of the Commission, I am writing to advise that your department will receive notice to appear before the Commission at an upcoming meeting so the Commission may review the decision not to adopt a regulation and determine whether to recommend to the Governor and the General Assembly that a regulation be adopted or that a change in the statutes is warranted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank W. Wagner".

Senator Frank W. Wagner
Chairman

cc: Members of JCAR

Sam Towell, Deputy Commissioner of Agriculture and Forestry

Commission Members:

Senator Frank W. Wagner, Chair
Senator John S. Edwards
Senator Stephen H. Martin
Senator John A. Cosgrove
Senator Ryan T. McDougle
Delegate Betsy B. Carr

Delegate Thomas A. Greason
Delegate William R. DeSteph, Jr.
Delegate Matthew James
Delegate L. Scott Lingamfelter
Delegate Roxann L. Robinson
Delegate R. Lee Ware, Jr.



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

P.O. Box 1163, Richmond, Virginia 23218

Phone: 804/786-3501 • Fax: 804/371-2945 • Hearing Impaired: 800/828-1120

www.vdacs.virginia.gov

Sandra J. Adams
Commissioner

July 1, 2015

The Honorable Frank W. Wagner, Chairman
Joint Commission on Administrative Rules
General Assembly Building
201 N. Ninth Street
Richmond, VA 23219

By email: kperrine@dls.virginia.gov

Dear Senator Wagner:

I am writing in response to your letter dated June 24, 2015, regarding the Virginia Department of Agriculture and Consumer Services' (VDACS) draft Private Animal Shelters guidance document. Specifically, I wanted to address the rationale for VDACS's decision to develop a guidance document in response to the recent changes to the definition of "private animal shelter" as established in the Comprehensive Animal Care law (Chapter 65 of Title 3.2 of the Code of Virginia) and provide you with background information regarding the release of the partial draft that was circulated earlier in June.

As you know, the 2015 Session of the General Assembly passed Senate Bill (SB) 1381, which was signed by Governor McAuliffe on March 23, 2015, as Chapter 492 and which takes effect on July 1, 2015. SB 1381 changes the definition of "private animal shelter" as established in § 3.2-6500 of the Comprehensive Animal Care law as follows:

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization operating for the purpose of finding permanent adoptive homes for animals.

Once the final version of this bill was signed into law, VDACS began working to determine the most effective way to implement this new language. While the number of changes this legislation makes to the Comprehensive Animal Care law is minimal, VDACS and its legal counsel with the Office of the Attorney General (OAG) interpret these new changes to require that all private animal shelters be operated for the purpose of finding permanent adoptive homes for animals, a requirement that did not previously exist because of the prior structure of § 3.2-6500.

Agency staff determined that it was critical to have some type of documented criteria established before our inspector began assessing whether a facility meets the new definition of “private animal shelter.” The agency considered multiple options, including (1) the development of a new regulation following the process outlined in the Virginia Administrative Process Act and (2) the development of a guidance document, which, as defined in § 2.2-4001, provides information or guidance to staff or to the public to interpret or implement statutes or the agency’s rules or regulations. Based on the advice of legal counsel, the agency decided that it would be better served by the development of a guidance document and began the process of drafting this document and soliciting stakeholder feedback on proposed inspection criteria.

On April 16, VDACS met with a number of proponents of SB 1381 at their request and listened to their input. They were encouraged to provide their suggestions in written form to the Office of Animal Care and Emergency Response (OACER) within the division of Animal and Food Industry Services (AFIS). The following month, opponents of SB 1381 met with Deputy Secretary of Agriculture and Forestry Sam Towell, expressed their concerns, and were likewise encouraged to provide their suggestions to OACER in written form. Using the information from these two groups, as well as internal agency expertise, OACER staff began the process of assembling the broad outlines of a draft guidance document.

Once a draft guidance document is completed by VDACS staff and vetted by OACER leadership, the AFIS division, and the Commissioner’s Office, it will then be reviewed by OAG counsel. Following that review, the guidance document will be placed on Virginia Regulatory Town Hall to solicit further public comment and feedback. After digesting that feedback, VDACS will then complete the guidance document process.

In early June, VDACS received a request under the Freedom of Information Act (FOIA) which required that the agency release an incomplete draft of the guidance document prior to the draft document’s completion. The draft guidance document released in response to this request had not yet been finalized internally or reviewed by OACER leadership, AFIS, the Commissioner’s Office, or by the OAG. As noted above, it was, in effect, an incomplete first draft. While public comment was and continues to be an important part of the guidance document development process, the version that was released did not fully incorporate the suggestions already received and was not in a form designed for feedback, as it did not represent the completed consideration of the agency and the OAG. However, to provide transparency to key stakeholders regarding the FOIA response and ensure that they were all operating on a level playing field, VDACS also forwarded the draft guidance document as it existed at that time to additional interested parties. Unfortunately, in conveying the draft guidance document to these stakeholders, we failed to provide more complete context regarding the incomplete nature of the

draft and the reason for its distribution. An email providing this additional information was subsequently sent to these stakeholders to provide further explanation.

I hope that this information provides the Commission with a more complete picture of VDACS' process for developing a guidance document, including the opportunities for public comment; the incomplete nature of the draft that was released pursuant to FOIA; and the reasoning behind the release of the preliminary draft to other interested stakeholders. Any final guidance document produced by the agency will be the product of internal review, stakeholder feedback, and legal counsel from the OAG. VDACS remains committed to carrying out its statutory responsibilities as set forth by the General Assembly in an open and professional manner.

Please feel free to contact me should you or any other members of the Commission have any questions or need any additional information.

Sincerely,



Sandra J. Adams
Commissioner

cc: Sen. John S. Edwards
Sen. Stephen H. Martin
Sen. John A. Cosgrove
Sen. Ryan T. McDougale
Del. Betsy B. Carr
Del. Thomas A. Greason
Del. William R. DeSteph, Jr.
Del. Matthew James
Del. L. Scott Lingamfelter
Del. Roxann L. Robinson
Del. R. Lee Ware
Samuel T. Towell, Deputy Secretary of Agriculture and Forestry

DRAFT-NOT FINAL VERSION

COMMONWEALTH OF VIRGINIA
Department of Agriculture and Consumer Services
Division of Animal and Food Industry Services
Office of Animal Care and Emergency Response
102 Governor Street, Richmond, Virginia 23219
Phone: 804.692.4001 Fax: 804.371.2380

PRIVATE ANIMAL SHELTERS

June 12, 2015

I. BACKGROUND

The 2015 Session of the General Assembly amended the definition of “private animal shelter” in Virginia’s Comprehensive Animal Care Law (Va Code § 3.2-6500 *et seq.*) to require that all facilities operating as private animal shelters operate for the “purpose of finding permanent adoptive homes” for animals. This purpose was previously a component of the definition but was not mandated to apply to all private animal shelters. This document is intended to provide guidance to the Office of the State Veterinarian in determining whether a facility meets the new, amended definition of “private animal shelter”.

II. DEFINITIONS (from Va Code § 3.2-6500, effective July 1, 2015)

Facility means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

Humane society means any incorporated, nonprofit organization that is organized for the purposes of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

Private animal shelter means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

Releasing agency means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

III. INSPECTION

A. Initial inspection and approval

Section §3.2-6548(C) of the Code of Virginia requires that the State Veterinarian, or his representative, inspect all private animal shelters prior to the shelter confining or disposing of animals. A facility that seeks to obtain approval as a private animal shelter must meet all of the criteria listed in the “Initial requirements for approval” subsection A of section IV of this document and any additional requirements outlined in Va Code §3.2-6548. Office of Animal Care and Emergency Response (OACER) staff will conduct an inspection of a facility that seeks to obtain approval as a private animal shelter prior to the facility opening. Once OACER staff determines that a facility meets the definition of a private animal shelter and is in compliance with all other applicable requirements, the State Veterinarian, or his representative, will issue an approval letter documenting that the facility is a “private animal shelter”.

B. Ongoing inspections

Pursuant to Va Code §3.2-6502, the State Veterinarian or his representative has the authority to conduct inspections of private animal shelters. OACER staff will conduct unannounced inspections at an interval determined by the State Veterinarian. If an organization operates multiple physical locations, OACER staff will inspect each facility separately.

IV. REQUIREMENTS OF ALL PRIVATE ANIMAL SHELTERS

A facility shall meet the following requirements to obtain or maintain status as an approved private animal shelter.

A. Initial requirements for approval

During the initial inspection of a facility that seeks to obtain approval as a private animal shelter, OACER staff will determine whether the facility is in compliance with the following requirements:

1. The facility is open to the general public a minimum of 20 hours per week, including hours during at least one weekend day per week.
2. The facility has signage on the exterior of the facility that is clearly visible to the public, identifies an entrance, and provides hours of open public visitation and contact information for the facility, including a telephone number or email address.
3. The organization that operates the facility has provided, prior to or at the time of inspection, documentation of its non-profit status from the Internal Revenue Service and its incorporation status from the Virginia State Corporation Commission.
4. If the organization that operates the facility solicits charitable donations, it must be registered to do so by the Virginia Department of Agriculture and Consumer Services.
5. The facility is in compliance with all local zoning ordinances. Compliance should be documented in writing from the local government prior to the initial inspection.
6. The facility is not licensed by the Department of Health Professions as a veterinary medical establishment. If a portion of the facility is licensed as such, that portion is clearly delineated on a diagram of the facility that is provided for reference during inspection.
7. The facility meets all additional requirements of the Comprehensive Animal Care Laws.

B. Annual requirements

A facility that is an approved private animal shelter on June 30, 2015, shall have until October 1, 2015, to comply with the requirements listed in this section. OACER staff will determine whether a facility that is an approved private animal shelter on June 30, 2015, is in compliance at the next inspection after October 1, 2015.

During the annual inspection of an approved private animal shelter, OACER staff will determine whether the private animal shelter is in compliance with the following requirements:

1. The shelter continues to meet all requirements for initial approval outlined in subsection A of this section.
2. The shelter maintains an annual combined *return to owner + adoption + transfer* rate greater than or equal to 50 percent. OACER staff will determine a shelter's annual rate using the custody record summary information submitted to the State Veterinarian pursuant to Va Code §3.2-6557. This requirement shall not apply to private animal shelters with a current contract to serve as a locality's public animal shelter.
3. The shelter maintains an annual *died in facility* rate of less than or equal to 5 percent. OACER staff will determine a shelter's annual rate using the custody record summary information submitted to the State Veterinarian pursuant to Va Code §3.2-6557.

V. COMPLIANCE PROCEDURE

INITIAL APPROVAL PROCESS	
A facility must have an approval letter issued by the State Veterinarian or his representative to operate as a private animal shelter. A facility operating without an approval letter is not considered a private animal shelter and will therefore be defined as a privately-owned collection of animals and may not transfer animals as a releasing agency. Operating as an unapproved private animal shelter could lead to violations of state pharmacy laws or local ordinances.	
Upon failure to meet initial requirements for approval	
A facility seeking to obtain approval as a new private animal shelter that does not meet all of the initial requirements for approval listed in subsection A of section IV of this document and any other requirements outlined in the Code of Virginia will be notified in writing of deficiencies. An approval letter will not be issued for the facility until the facility complies with all of the initial requirements for approval.	
Further action	
The facility is not considered a private animal shelter until it complies with all initial requirements and has received an approval letter.	
Procedure for re-inspection	
TBD	

GENERAL COMPLIANCE PROCEDURE	
Noncompliance with Section IV, Subsection B, Item 1 (i.e. Subsection A, Item numbers 1-7)	Noncompliance with Section IV, Subsection B, Item numbers 2 and 3

Provide written notice to the responsible authority requiring the submission of a corrective action plan to the Office of Animal Care and Emergency Response (OACER) within the timeframe specified in the written notice.	Provide written notice to the responsible authority requiring the submission of (i) a corrective action plan to OACER within the timeframe specified in the written notice, and (ii) a written animal records summary comprising three months of records data within the timeframe and format specified in the written notice.
If noncompliance with the same requirement is noted within a five year time period	If rates determined from the submitted three month records summary are still noncompliant
The OACER Program Manager will issue a written notice informing the responsible authority that the facility is no longer an approved private animal shelter. Copies of the written notice revoking the approved status of the private animal shelter will be sent by OACER to the Virginia Board of Pharmacy and to animal control in the locality in which the facility is located.	The OACER Program Manager will issue a written notice informing the responsible authority that the facility is no longer an approved private animal shelter. Copies of the written notice revoking the approved status of the private animal shelter will be sent by OACER to the Virginia Board of Pharmacy and to animal control in the locality in which the facility is located.
Procedure for reinstatement of approval status	Procedure for reinstatement of approval status
TBD	TBD



Karen Perrine <kperrine@dls.virginia.gov>

PETA's comments on VDACS Commissioner Adams' July 1 letter to Senator Wagner/JCAR

Daphna Nachminovitch <DAPHNAN@peta.org>
To: senate district07 <district07@senate.virginia.gov>
Cc: "kperrine@dls.virginia.gov" <kperrine@dls.virginia.gov>

Fri, Jul 24, 2015 at 10:30 AM

Dear Senator Wagner,

Thank you for sharing with us the Virginia Department of Agriculture's (VDACS') reply to your June 24 letter and for soliciting our comments. I have shared the document with Sharon Adams of the Virginia Alliance for Animal Shelters (VAAS), and she will reply separately. As chair of VAAS, Ms. Adams has had her own set of dealings and experiences with this issue.

The facts and timeline of events make clear that development of the guidance document was on track for a July 1, 2015, implementation until your June 24 letter was sent on behalf of the Joint Commission on Administrative Rules. I am copying Karen Perrine on this letter in the event that you wish to share our comments with members of the Commission.

For your review and consideration, please find attached a timeline of relevant events. I apologize for its length but thought that it was important to include the facts that show the exclusive, selective tactic used to craft this so-called "guidance document"—which is in fact, as you have noted, regulatory in nature and which is contrary to statute in its content.

As you know, I have been meeting with legislators to set the record straight about PETA and our local work. During a number of meetings with legislators from both sides of the aisle, I have been told that the bill passed with such a majority because it was "neutered" after the amendment, and had "no teeth." PETA did not oppose the bill after the amendment was made. We have always found permanent adoptive homes for adoptable animals, and we will continue to do so.

You will see upon review of the timeline that during the session, proponents of SB 1381 posited that the bill was a modest "technical amendment" that simply "closed a loophole" and clarified that finding permanent adoptive homes is a purpose of private shelters. According to documents cited in the attached timeline, following passage and signing of the bill, VDACS represented publicly that it planned to develop a new regulation through the Administrative Process Act (APA), which it expected would take two to three years "given the extensive stakeholder interest in this issue." But after a mid-April meeting with proponents of the bill, VDACS began drafting the guidance document. It was purely by chance that stakeholders found out about the guidance document, and by

then, its development was already well underway. Additional information had to be obtained via a Freedom of Information Act (FOIA) request, which took several weeks for VDACS to fulfill and for which PETA was charged nearly \$700. PETA shared the information with other stakeholders, namely the Virginia Animal Control Association (VACA)—which recently sent a letter of concern to all members of the General Assembly—and VAAS, which was concerned enough about the shocking lack of transparency and participation in this process to retain the services of McGuire Woods. If the process were open and transparent, none of the above would have been necessary.

No one disagrees that animal shelters—private and public—should have as a purpose finding permanent adoptive homes for adoptable animals. *There is no need for a guidance document or additional regulations on this.* Current statutory record-keeping requirements, which VDACS inspects annually, will make clear to the VDACS shelter inspector whether a shelter has advertised animals for adoption, placed animals in homes, transferred animals to other facilities, etc. No other state in the nation has ever imposed a metric "save rate" on animal shelters, because each shelter, especially privately funded ones, makes its own intake policies and disposition decisions. PETA's animal shelter is the only private shelter in our area (and probably in the state) that serves more than 30 localities, takes in aggressive, dying, feral, diseased, and otherwise unadoptable animals—we do not have far-off appointments or waiting lists, we do not charge a fee, we are available 24/7 for emergencies, we deal with wildlife calls, and we never turn an animal away. Of course our disposition outcome statistics are different from those of a private animal shelter that rejects animals precisely because they are unadoptable or difficult to place.

I hope that this information is useful and that you will contact me if I can be of service in any way. You can always reach me at [757-943-7440](tel:757-943-7440) and via e-mail at DaphnaN@peta.org. Thank you for your interest and assistance.

Respectfully,

Daphna Nachminovitch, Senior Vice President

Cruelty Investigations

PETA.org

Daphnan@peta.org

[757-962-8338](tel:757-962-8338) (office)

[757-628-0796](tel:757-628-0796) (fax)



2015-07-24 SB1381 guidance document timeline.pdf

48K

Timeline of Events Related to Senate Bill 1381 and Its Implementation

Please note: This is a partial timeline. Additional information is available if needed. All emphases in **bold** have been added. Documents corresponding to quotations and correspondence are available upon request.

- **January 29, 2015:** During testimony in front of the Senate Agriculture, Conservation and Natural Resources Committee, Debra Griggs, president of the Virginia Federation of Humane Societies (VFHS) and founder of No Kill Hampton Roads, states the following:

My name is Debra Griggs and I am the president of the Virginia Federation of Humane Societies. We believe this bill closes the loophole in the definition of private animal shelter to make it abundantly clear that finding permanent adoptive homes is **a** purpose of those shelters. This does not affect public shelters only private shelters. It doesn't say private animal shelters must succeed at finding permanent adoptive homes just that it must be one of your purposes.

- **February 2, 2015:** The "SB 1381 Talking Points" internal document, which was obtained via a Freedom of Information Act (FOIA) request to the Virginia Department of Agriculture and Consumer Services (VDACS), says the following:

This bill is supported by 1 (one) affected constituent group (the Virginia Federation of Humane Societies), and opposed by 4 (four) affected constituent groups (Virginia Alliance of Animal Shelters, Virginia Animal Control Association [VACA], People for the Ethical Treatment of Animals, Virginia Alliance for Animal Shelters [VAAS]).

February 3, 2015: VDACS posts an [impact statement](#) regarding SB 1381, which says the following:

According to the Department of Agriculture and Consumer Services (VDACS), the bill may have a fiscal impact to localities. The bill limits the role of private animal shelters to finding permanent adoptive homes and facilitating lifesaving outcomes for animals, and may result in an increase in municipal shelter populations. According to VDACS, **private animal shelters may choose to no longer accept medically or behaviorally challenging animals, and as a result the population of animals in municipal shelters may increase. Also, concerns about euthanasia rates may lead private animal shelters to terminate contracts with localities to operate as municipal animal shelters.**

- **February 19, 2015:** In a letter to members of the House of Delegates, SB 1381 proponent Robin Starr, the CEO of the Richmond SPCA, writes the following:

[SB 1381] is not solely about PETA but, rather, is about insuring that private shelters transparently meet the legitimate expectation of donors and other

members of the public that they should sincerely try to get animals adopted. No one expects that they will always be successful at that purpose and nothing about this bill would mean that any private shelter would have to become no-kill. It would only mean that shelters, as the public expects us to do, should make an effort to adopt pets to people.

- **February 25, 2015:** Starr writes a blog post on the Richmond SPCA's website that includes this:

It was a modest bill that simply made clear that private shelters operating on charitable dollars should make a sincere effort to get animals adopted rather than just killing them all. **It was not, as the hysterics have claimed, an effort to force all private shelters in Virginia to be no kill or to prevent them from being able to euthanize animals. That was an irresponsible claim all along since the right of shelters to euthanize is set forth in a [separate code section](#) that has not changed at all.**

- **February 26, 2015:** Ten members of the House of Delegates sign a letter to VDACS that states the following:

As more private shelters turn to the no kill model, there is no doubt the open admission private and public shelters will incur the costs and responsibilities for the animals the no kill shelters reject. ... We believe it is critical that given these circumstances, the regulations be updated to require these reports to disclose the full range of data regarding intake and disposition by private shelters.

The letter is signed by Delegates C. Matt Fariss, Margaret B. Ransone, Robert Bloxom Jr., James E. Edmunds II, Edward T. Scott, Thomas C. Wright Jr., Robert D. Orrock Sr., Danny Marshall III, Jackson Miller, and Michael J. Webert.

- **March 3, 2015:** In response to an inquiry from a private citizen, VDACS writes the following:

It is premature to speculate on the impact that the passage of Senate Bill 1381 may have on private shelters in Virginia. **The General Assembly passes the law but will likely require the promulgation of regulations. That can take two years or more to complete when following the normal administrative process for regulation development.**

- **March 8, 2015:** *The Virginian-Pilot* prints an opinion piece from Sen. Bill Stanley that includes this:

SB1381 is a technical amendment in a section of the Virginia Code. It states that the primary purpose of a private animal shelter shall be to find permanent adoptive homes for those companion animals that the private shelter takes in. . . . While there may exist a debate over the need for PETA's

"services," when I introduced SB1381, it was **solely to restore the original intent of the code** to save companion animals from unnecessary euthanasia.

- **March 23, 2015:** SB 1381 is signed into law by Gov. Terry McAuliffe.
- **March 26, 2015:** In response to an inquiry, the VDACS Communications Office sends this blurb—which was provided by Kevin Schmidt (director of the Office of Policy, Planning and Research) and approved by VDACS Commissioner Sandy Adams (who said, "This is fine. The law was changed and **we will now develop regulations to provide related policy**")—to The Huffington Post:

VDACS plans to develop a new regulation through the Administrative Process Act to further clarify the qualifications for a facility "operated for the purpose of finding permanent adoptive homes for animals". **The agency expects that the three-step regulatory process required by the Code of Virginia will take two to three years to complete given the extensive stakeholder interest in this issue. The impact of the law on PETA or any other private animal shelter will not be known until the regulation is finalized.**

- **April 16, 2015:** SB 1381 patron Sen. Bill Stanley, Debra Griggs of the VFHS, Robin Starr of the Richmond SPCA, and Will Gomaa of Maryland-based Alley Cat Allies meet with Deputy Secretary of Agriculture Sam Towell, Commissioner Sandy Adams, and State Veterinarian Dr. Richard Wilkes. Handwritten notes obtained via a FOIA request indicate that Starr and Gomaa pushed for a definition of "private animal shelter" that requires an adoption rate above 50 percent. (SB 1381 provides no legal basis whatsoever for a metric of any kind.) Gomaa insisted that a private shelter with an adoption rate below 50 percent is not putting in any effort. Dr. Wilkes asked the group to provide suggestions for criteria, and they agreed to submit the criteria to VDACS by June 1.
- **April 28, 2015:** Dr. Wilkes provides via e-mail a "VDACS report for VVMA [Virginia Veterinary Medical Association] meeting April 30" that includes the following:

SB 1381 changed the definition of a public animal shelter to require that a shelter have the finding of permanent, adoptive homes for companion animals as the primary mission of the facility. **VDACS is developing criteria that will determine the primary mission of a public shelter and hopes to start using the definition for inspections near July 1.** A facility must be designated as a shelter to be allowed to have trained and approved non-veterinarians perform euthanasia.

Note: Dr. Wilkes most certainly wrote "public" in error, when he meant to write "private."

- **May 6, 2015:** The following is a submission from the deputy director of VDACS' Animal and Food Industry Services for the VDACS Commissioner's Report for the May 21 Board of Agriculture and Consumer Services meeting:

The State Veterinarian joined the Deputy Secretary of Agriculture [Sam Towell], the Commissioner of Agriculture [Sandy Adams], the Director of the VDACS Officer [*sic*] of Policy, Planning and Research [Kevin Schmidt] for a meeting with Senator William Stanley, and officials from the Virginia Federation of Humane Societies [Debra Griggs], the Richmond Society for the Prevention of Cruelty to Animals [Robin Starr] and [Maryland-based] Alley Cat Allies [Will Gomaa] to discuss the implementation of SB 1381 once it is implemented on July 1, 2015. **The group expressed their opinion that VDACS should be prepared to take action to enforce SB 1381 as soon as possible after its enactment date.**

- **May 7, 2015:** PETA files a FOIA request with VDACS for documents pertaining to the implementation of SB 1381.
- **May 14, 2015:** PETA receives an invoice from VDACS for responding to the May 7 FOIA request, in the amount of \$635.32.
- **May 14, 2015:** Commissioner Adams writes the following to VDACS Deputy Commissioner Charles Green:

The message below is one of several I've received today on SB1381. A call for comments must have been issued recently. It prompted me to think we should also put an update on SB1381 on our website too. **Nothing more than that we are drafting guidelines for shelters related to SB1381 that will be finalized by July 1, the effective date of the bill, or soon thereafter.**

- **June 2, 2015:** PETA receives another invoice from VDACS for responding to PETA's May 7 FOIA request, in the additional amount of \$48.28. **(The total cost to PETA for the FOIA request was \$683.60.)**
- **June 4, 2015:** PETA receives from VDACS records responsive to PETA's May 7 FOIA request. PETA's senior vice president of cruelty investigations identifies a two-page document titled "Criteria for establishing whether an animal shelter will meet the amended definition of *private animal shelter*, that functions to find permanent adoptive homes for animals."
- **June 5, 2015:** PETA's senior vice president of cruelty investigations speaks with a VDACS representative and confirms that the two-page document is an agency document. PETA is told that there are no plans to have a public comment period on the document but that "major stakeholder groups" (identified as VACA, VAAS, and the VFHS) will be notified if that changes. PETA submits a FOIA request for the most current draft of the guidance document.
- **June 9, 2015:** PETA representatives meet with Michelle Welch, senior assistant attorney general and director of the Animal Law Unit of the Attorney General's Office, who

advises—in response to our asking if the guidance document will be ready by July 1—
"They [VDACS] are trying to get there, but government is slow. You should have that meeting [with VDACS] sooner than later."

- **June 11, 2015:** PETA's senior vice president of cruelty investigations receives a phone call from Kevin Schmidt with VDACS regarding PETA's June 5 FOIA request for the most recent draft of the guidance document. Schmidt asks PETA if we would be amenable to forgoing receipt of the draft and waiting until the draft is posted on the Virginia Regulatory Town Hall website. Schmidt maintains that there will be no opportunity for public comment even after the document is posted on the site. He confirms that plans to have the document implemented by July 1, 2015, are still on track. Schmidt estimates that it will take at least another week until the document is posted on the site. PETA asks if a meeting with VDACS within a few days would be possible in lieu of receiving the draft, and Schmidt refers PETA to Dr. Wilkes. PETA gives Schmidt its assurance that even if the FOIA'd documents were sent to it by the FOIA-mandated five-business-day deadline of June 12, PETA would not post them online or do anything public with them other than share them with other stakeholders, namely VAAS and VACA. PETA explains to Schmidt that there is a great deal of concern among the stakeholders that this document—about which VAAS, VACA, and PETA learned haphazardly—will be far harder for the collective to comment on once it's drafted and posted. PETA tells Schmidt that it will consult with other stakeholders and let him know by June 12 if PETA is willing to forgo receipt of the draft.
- **June 12, 2015:** PETA advises Schmidt that—given that PETA is the target of the guidance document and the fact that the document is expected to be in effect within roughly two weeks—PETA cannot forgo receipt of it. At 5:48 p.m., PETA receives the draft guidance document via e-mail. *Note: The document makes clear that implementation of the guidelines was on track for July 1*, including the following text:

A facility that is an approved private animal shelter on June 30, 2015, shall have until October 1, 2015, to comply with the requirements listed in this section. OACER [Office of Animal Care and Emergency Response] staff will determine whether a facility that is an approved private animal shelter on June 30, 2015, is in compliance at the next inspection after October 1, 2015.

- **June 15, 2015:** Dr.Carolynn Bissett of VDACS shares the draft guidance document with members of the Comprehensive Animal Care Laws (CACL) Working Group. CACL is a group of stakeholder organizations and at-large members convened by VDACS in 2012. No input or feedback about the document is requested in this e-mail message. The message states the following:

Dear Working Group members: In response to the passage of Senate Bill 1381, VDACS is developing a guidance document to assist in the assessment of whether a private animal shelter meets the amended definition, as operating for the purposes of "finding permanent adoptive homes." Attached is a draft of said guidance document for your perusal. Please let me know if you have any

questions. Thank you for your continued partnership in meeting the guidelines of the Comprehensive Animal Care Laws.

- **June 24, 2015:** Sen. Frank Wagner writes to VDACS to put the commissioner on notice of a potential Joint Commission on Administrative Rules hearing because of the commission's concern that the department is "utilizing an informal process to develop public policy with little formal opportunities for public input."
- **June 24, 2015:** Delegate Danny Marshall writes to VDACS regarding the guidance document:

I was surprised to hear that there is an interpretation of the bill which gives impetus to writing new regulations that affect private shelters, if that is indeed the case. The purpose of moving the language "*operated for the purpose of finding permanent adoptive homes for animals*" from a lower line to the first line of that section of Code was presented to the Agriculture Committee as a statement of emphasis to insure that all shelters make an attempt to adopt out animals. "Private shelters operating on charitable dollars should make a sincere effort to get animals adopted rather than kill them," as one proponent stated. There was no discussion of regulation changes or any other requirements intended with passage of the bill.

- **June 24, 2015:** Delegate Barry Knight writes to VDACS regarding the guidance document:

I have been made aware that the Virginia Department of Agriculture and Consumer Services has overreached its regulation of private shelters above and beyond the intent of SB1381. ... If the intent of SB1381 needs to be polished then we have the entire year to speak about those changes and have recommendations for the 2016 legislative session.

- **June 24, 2015:** In response to these and other communications, Dr. Wilkes of VDACS sends out an e-mail with the subject line "SB 1381 Guidance Document clarification," which states the following:

While SB 1381 will be enacted July 1 of this year, the final guidance document will not be implemented for some time. The delay in its implementation is due to the extensive review process and consideration of stakeholder feedback. VDACS has started the process of developing a draft guidance document and is soliciting stakeholder feedback on proposed inspection criteria. The final guidance document will be the product of internal review, stakeholder feedback, and OAG [Office of the Attorney General] recommendations. VDACS will not take any action to enforce the change made by SB1381 until an appropriate time after a final guidance document is released.

This is in direct contradiction to all the prior documents and information related above indicating the clear intent of VDACS to implement the guidance document on or soon after July 1 without any opportunity for public comment.

- **July 15, 2015:** PETA's senior vice president of cruelty investigations, PETA's general counsel, and PETA Foundation counsel meet with VDACS representatives Commissioner Sandy Adams, Dr. Wilkes, Dr. Carolynn Bissett, Kevin Schmidt, and Erin Williams, senior policy analyst for the Office of Policy, Planning and Research. Commissioner Adams tells PETA representatives that the guidance document was not ever meant to be ready by July 1, just that the agency had to show that it had started work on it by that date and that it was always VDACS' intent to post the document on the Virginia Regulatory Town Hall website for public comment. Commissioner Adams says that it has been a busy summer and there is no firm timeline for the implementation of the guidance document.

Karen Perrine <kperrine@dls.virginia.gov>

Response to Commissioner Adams letter to JCAR of July 1, 2015

Sharon Q. Adams <sharonadams980@gmail.com>

Thu, Jul 23, 2015 at 8:56 PM

To: district07@senate.virginia.govCc: kperrine@dls.virginia.gov

The Honorable Frank W. Wagner, Chairman

July 22, 2015

Joint Commission on Administration Rules

General Assembly Building

201 N. Ninth Street

Richmond, VA 23219

By email: kperrine@dls.virginia.gov

Dear Senator Wagner,

This is in response to your letter of July 1 from Commissioner Sandra Adams regarding the development of a guidance document related to SB 1381 by the Virginia Department of Agriculture and Consumer Services (VDACS). In order to clarify the sequence of events and our specific concerns, please allow me to present the following.

First, major stakeholders learned that a guidance document would be created by pure hazard. My organization—which is a major stakeholder—was totally unaware of any development of a document related to SB1381 until the Virginia Alliance for Animal Shelters (VAAS) workshop in Danville, VA on May 6th. One of the attendees asked Dr. Carolyn Bissett of VDACS, who was in attendance, about SB1381 and what was going on with this issue. The attendee was concerned about the impact on his small rural public shelter. At that meeting, for the first time, we were informed that VDACS was developing guidelines. I immediately called Dr. Richard Wilkes of VDACS that afternoon and was told that the Department, had met with the bill's proponents after the session and, at the OAG's recommendation, was developing a guidance document. This would be the first guidance document ever promulgated by VDACS related to animal welfare legislation; therefore, it is easy to understand why it was unanticipated by those of us in the regulated community.

There was no indication in the testimony by the proponents during the session nor any suggestion by any member of the House or Senate that "guidance" was required on this bill.

We pursued information on this matter, it was not offered to us. We asked for a meeting with the Secretary as soon as possible, as he was out of country we were offered a meeting with Deputy Secretary Sam Towell on May 22nd. I had been told and internal documents support the fact that July 1st was the date at which the document was to be complete and enforcement was to begin post enactment. At that point, we had very little time to have any input.

Nevertheless, we put our concerns and comments in writing to Deputy Secretary Towell on June 1st but not a single recommendation we offered (including those which mirrored a February letter from 10 members of the House of Delegates), was included in the draft guidance document. (See attached letters of VAAS and Members of the House of Delegates.)

We had to actively and aggressively solicit information on this matter using FOIA requests and other processes and it was only after our efforts and the inquiries of several Legislators and others that VDACS sent out the draft

guidance document to a small group – not seeking input or comments, just asking if we had any questions. The document's development had already occurred, without the participation of most of the major stakeholders. More than two months had passed between meetings with a few proponents of the legislation and the draft document finally being shared with members of the Comprehensive Animal Care Laws committee.

As one who has represented animal welfare stakeholders and stakeholder groups in the Commonwealth for close to 25 years, I was disheartened by the approach employed to develop this regulation, disguised as a guideline - an approach apparently designed to ignore and even deny the concerns, indeed the realities, of the majority of stakeholders. As you know, after getting nowhere with pursuing meetings, submitting written comments, and making many calls, VAAS had to pool together significant resources to retain the services of McGuire Woods in an effort to finally engage on this matter and to protect our constituent shelters and the animals who depend on them.

The suggestion that this process was participatory, transparent and balanced, in my view, is completely false. The notion that there was no commitment to a July 1st deadline is not supported by conversations with Department representatives or internal documents.

- 1. The testimony proponents presented to the House Agriculture committee was that this bill was simply intended to "close a loophole" in the existing definition. Legislators were repeatedly assured that the bill did not seek to implement "no-kill" in the Commonwealth (and those who suspected the opposite were called "hysterics" by proponents of the bill). Yet this guidance document draft imposes an arbitrary 50 % "save rate" on shelters. It seems that legislators were misled.
- 2. This guidance document is the first of its kind issued by VDACS after years of other very sweeping legislation having been enacted. The Department has never before created a guidance document to interpret a definition. There was no public instruction or charge given to VDACS by the General Assembly on this matter.
- 3. **No other state in the U.S. has imposed a "save rate" on private animal shelters. Virginia should be wary of responding to the demands of zealots in becoming the guinea pig for this type of overreach.**

It appears therefore that the impetus for and the only input included in this draft came from individuals who by and large do not operate shelters at all, except for one exceptionally well-funded urban shelter. This is unfair and unsound. We have never done business this way in animal welfare. The process surrounding this activity has been opaque and the draft document appears to represent an experiment based on a totally arbitrary standard and is quite obviously regulatory in nature, certainly not just guidance. A "one size fits all" approach to shelters in every community in the Commonwealth is ill-advised and unwise.

Thank you for expressing your concerns on the approach being taken by VDACS and the Office of the Attorney General. We look forward to a more open and inclusive review of any proposed action on this matter. We hope the JCAR committee will continue their oversight.

Regards,

Sharon Quillen Adams, Virginia Alliance for Animal Shelters

3 attachments



logo vaas.jpg
18K



Sam Towell.docx

275K



1st Fariss letter with 9 signatories.pdf

529K



HOUSE OF DELEGATES
RICHMOND

C. MATT FARISS
243-C LIVESTOCK ROAD
RUSTBURG, VIRGINIA 24588

FIFTY-NINTH DISTRICT

COMMITTEE ASSIGNMENTS:
FINANCE
AGRICULTURE, CHESAPEAKE AND
NATURAL RESOURCES
MILITIA, POLICE AND PUBLIC SAFETY

February 26, 2015

Dr.Carolynn Bisset
Acting Program Manager,
Animal Care and Emergency Response
Virginia Department of Agriculture and Consumer Services
Post Office Box 1163
Richmond, Virginia 23218

RE: No Kill Advocacy Center Petition for Rulemaking

Dear Dr. Bissett,

It has come to our attention that the No Kill Advocacy Center has petitioned your agency to amend the regulations regarding record keeping for both public and private shelters. We have concerns about the motivation for this enhanced disposition record keeping requirement, and particularly the impact it could have on rural public shelters that have very small staff and resources. The fact that this request has come from a national no kill organization indicates to us it is an attempt to further stigmatize humane euthanasia.

In light of this request, we would like to see language added to the regulations that requires the same level of documentation for all companion animals turned away by private shelters that do not have an open admission policy. Specifically, the record should document every animal presented to the private shelter in person, telephonically or by email and include all pertinent information about the animal (species, age, breed, medical conditions), owner and finder information and the reason for surrender if applicable, and the stated reason the private shelter did not accept the animal. Also the record should include whether or not the limited intake shelter referred the owner to another shelter and which one. In addition, given our personal knowledge of hunting dog capture and relocations, we would like to include evidence of collar to the document records for both public and private shelters.

As more private shelters turn to the no kill model, there is no doubt the open admission private and public shelters will incur the costs and responsibilities for the animals the no kill shelters reject. Animal advocates of all persuasions rely on the VDACS disposition reports to bolster their views and inform public opinion. We believe it is critical that given these circumstances, the regulations be updated to require these reports to disclose the full range of data regarding intake and disposition by private shelters.

On another matter, we may like to see a change in Article 5, chapter 3, Section 18.2-97.1, *Removal of a tracking device* to delete the 3rd line....**and with the intent to prevent or hinder the owner from locating the dog.** We do not require the need to prove intent in 3.2-6587 for the removal of a license tag. Your comments on this matter are appreciated.

Sincerely,



C. Matt Fariss
Delegate 59th District



Thomas C. Wright, Jr.
Delegate 61st District



Margaret B. Ransone
Delegate 99th District



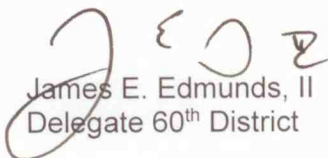
Robert D. Orrock, Sr.
Delegate 54th District



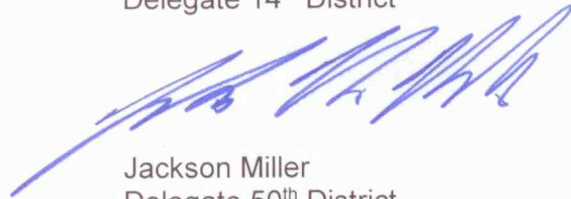
Robert Bloxom, Jr.
Delegate 100th District



Danny Marshall, III
Delegate 14th District



James E. Edmunds, II
Delegate 60th District



Jackson Miller
Delegate 50th District



Edward T. Scott
Delegate 30th District



Michael J. Webert
Delegate 18th District



June 1, 2015

Sam Towell, Deputy Secretary

Department of Agriculture & Forestry

Patrick Henry Building

Richmond, VA 23219

Dear Deputy Towell,

Thank you for meeting with me on the issue of SB1381. As you know, I learned through a circuitous route that VDACS staff and perhaps others are preparing some sort of document to be applied to *private shelters* in Virginia pursuant to the passage of Senate Bill 1381. There are a number of questions associated with that process, not the least of which has been the lack of transparency to those most affected. It appears that conversations about both the need for such a document and what it should include have only been conducted with four proponents of the bill, only one of whom operates a private (extremely limited-admission) shelter.

If there is a belief that the repositioning of six words in the private shelter definition constitutes such a change in purpose that a guidance document is necessary, then it would assume that there is an understanding of what that change actually is. As I recall, the testimony, both of the patron and the proponents of the bill, was that the bill's purpose was simply to "insure that shelters make an attempt to adopt out animals." One proponent stated, "It is a modest bill that simply made clear that private shelters operating on charitable dollars should make a sincere effort to get animals adopted rather than kill them all." I would argue, if in fact that was the avowed impetus for the bill, then it actually constituted no change in the definition, as there is no empirical evidence that any private shelter chooses to not adopt out adoptable animals it receives. It may be true that various shelters accept various types of animals with various conditions and limitations; however, there is no evidence that any private shelter does not attempt to place adoptable animals in permanent adoptive homes.

The question would be then what was the legislators' understanding and intent when they adopted this bill? Was it simply to reaffirm the existing definition by moving six words within the paragraph in order to target and perhaps embarrass one specific private shelter? Or was it simply easier to accept the relocation of these words with the

thought it won't really do any harm? Or, was the intent to upend the missions and operating philosophies of privately funded organizations to meet some ambiguous standard of "sincere attempt to adopt out animals?" Shouldn't those policies be set by the private donors of these organization consistent with the regulations of operating a shelter, i.e. adequate care and lawful disposition? Is euthanasia no longer an appropriate disposition in a private shelter? Did the legislators really intend to impose the perspective of those who are perfectly comfortable with shelter policies that reject animals at the door if those animals are believed to be unadoptable? Is that the measurement of a private shelter?

If the preparation of a guidance document does not answer the question of legislative intent and is predominantly influenced by, indeed initiated by, those very individuals who told the General Assembly that this bill was not really going to impact private shelters, except for one, then perhaps they are not to be entrusted to honestly reflect intent. It would seem that they had the application of some sort of performance standard or metric or outcome in their minds all along, but were not forthcoming with the legislators.

There are some facts that were never presented to the General Assembly, although some of us tried. The percentage of euthanasia in humane societies, generally privately funded shelters, has decreased by 67% from 2004 to 2014. This hardly suggests that private shelters are not currently operating for the purpose of adopting animals. These same shelters reduced the number of animals they took in 15% and increased their adoption rate by 23%. What is the problem that this guidance document is trying to fix?

Now that we know that there is in fact some intention to do more than simply reaffirm adoption as a purpose for private shelters, we will share with our colleagues this activity by the department, to the extent we understand what it actually is. We will reach out to members of the Legislature to determine both what they think about this activity and what their "intent" was in voting for this bill. We will advise local jurisdictions that they may want to watch the outcome of this effort as ultimately Senate Bill 1381 will impact them in one of two ways. If the document, whatever is in it, is used by the proponents of SB1381 in the same way in which they have handled this matter so far, the jurisdictions can expect private shelters to continue to be intimidated, harassed or simply given the excuse to turn away animals that cannot be guaranteed a permanent adoptive home. In that case, the owner will take the animal to the public shelter, thereby increasing taxpayer costs. Or, the owner will abandon the animal out of frustration, confusion, embarrassment or simple irresponsibility. In that case, the animal will become an animal control and public health problem and increase the taxpayer burden.

Actions always have consequences, some known and many unknown. In the case of SB1381 and the subsequent actions by VDACS, for example could an owner be charged with failure to provide care or with cruelty to animals if the animal presented to the shelter is ill, injured, suffering yet the animal is turned away but the owner does not have the resources to treat and/or have the animal humanely euthanized? What will veterinarians do who now refer animal owners to shelters if the owner is not their patient but the animal requires euthanasia? If we are going to dictate outcomes to privately

funded shelters, perhaps veterinarians should be required to offer euthanasia in its place as part of their licensure? Or will the choice of animal owner be to put an animal to death him or herself using drowning, or a gun, or starvation or some other method? In which case, can we honestly say we are helping and improving the lives of animals?

For the past 100 years, shelters both public and private worked in conjunction to protect animals from abandonment, to secure homes whenever possible and to provide merciful and compassionate euthanasia when adoption was not realistically possible. Was it the intent of the General Assembly to contribute to the fracturing of that partnership and to send animal welfare back to the days of owners having no recourse but taking matters into their own hands? I don't believe that was their intent.

Certainly, if there is to be a document pertaining to SB1381, it must contain at least two elements:

1. It must include the recommendations from a letter sent by Senator Matt Farris and signed by 9 other legislators insisting that private shelters identify what and how many animals are turned away by them. That is essential to transparency and to a realistic evaluation of outcomes.
2. A private shelter must be prohibited from engaging in or facilitating any dispositions that do not result in "finding permanent adoptive homes" or are not otherwise authorized.

I respectfully request that you keep us apprised of the developments in this matter.

Sincerely,

Sharon Quillen Adams, MPA

Virginia Alliance for Animal Shelters (VAAS)